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May 10, 2013

To: Supervisor Mark Ridley-Thomas, Chairman
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From: William T Fujioka
Chief Executive Officer

SACRAMENTO UPDATE – CALIFORNIA ENVIRONMENTAL QUALITY ACT LEGISLATION

Executive Summary

This memorandum contains reports on legislation of county interest related to proposed reforms to the California Environmental Quality Act (CEQA). The measures would: 1) establish Statewide standardized threshold for the environmental impacts of traffic and noise for infill projects; 2) expedite disposition of legal challenges under CEQA by requiring concurrent preparation of the record of proceedings and allowing courts to issue writs of mandates limited to only the portion of environmental documents found to be in violation of CEQA; 3) revise CEQA notice and document posting requirements; 4) and clarifying types of information that would require a supplemental environmental review for previously exempt projects, among other provisions.

Legislation of County Interest

SB 123 (Corbett), which as amended on May 2, 2013, would require, starting on July 1, 2014, the creation of an environmental and land use division within two or more superior courts within each of the appellate districts of the State to process civil proceedings brought pursuant to CEQA. The bill would also authorize the issuance of environmental license plates, upon application and payment of certain fees, and would authorize the appropriation of those fees by the Legislature to supplement funding for the operation of the environmental and land use court division.

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The Department of Regional Planning reports that SB 123 could potentially expedite resolution of CEQA litigation by establishing special divisions to handle these cases and assigning judges with appropriate knowledge and expertise in CEQA and related land use matters.

SB 123 passed the Senate Judiciary Committee by a vote of 4 to 3 on April 16, 2013. The measure is scheduled for hearing in the Senate Appropriations Committee on May 13, 2013.

SB 359 (Corbett), which as amended on April 1, 2013, would: 1) revise the residential infill exemption under CEQA by increasing the amount of allowable neighborhood-serving goods, services, or retail uses from 15 percent to 25 percent of the building square footage; and 2) require a lead agency to determine whether a housing project meets the criteria for infill exemption from CEQA, passed the Senate Environmental Quality by a vote of 8 to 0 on May 1, 2013. This measure is scheduled to be heard in the Senate Appropriations Committee on May 13, 2013.

SB 436 (Jackson), which as amended on April 3, 2013, would: 1) add the State Clearinghouse and project applicants to the list of parties and entities that must receive public notice from the lead agency regarding the period to comment on an environmental document and the date, time, and place of any public hearing on a proposed project; and 2) clarify that the lead agency must conduct at least one public scoping meeting for projects of statewide, regional or area wide significance or that may affect a highway or other facility under the jurisdiction of the California Department of Transportation (DOT), if requested by DOT.

The Department of Regional Planning indicates that its current notification procedure related to CEQA compliance is consistent with the provisions of SB 436, with the exception of the State Clearinghouse. The Department notes that adding that entity to notification requirements would not create an exceptional burden on its operations. However, DRP notes that time periods specified by CEQA do not commence until the notices are posted and clarifying the bill's language to allow for notification to the State Clearinghouse by email would provide more certainty in establishing the "filing date" and allow both the lead agency and applicants to have better control over project timelines.

SB 436 passed the Senate Environmental Quality Committee by a vote of 7 to 1 on May 1, 2013 and is scheduled to be heard in the Senate Appropriations Committee on May 13, 2013.

SB 617 (Evans), which as amended on April 1, 2013, would: 1) require that notices of determination be filed concurrently by the Office of Planning and Research (OPR) and

the county clerk; 2) require, until January 1, 2017, the lead agency to prepare a record of proceeding concurrently with the preparation of environmental documents for projects determined to be of statewide, regional or area wide environmental significance and projects that would implement the Sustainable Communities Strategy pursuant to SB 375; 3) require a lead agency to include in an EIR information on any significant effects that may result from locating a project existing or foreseeable natural hazards or adverse environmental conditions; 4) expand the requirements for posting notices to include electronic posting by OPR; and 5) amend the definition of "environment" under CEQA to include "health and safety of people affected by the physical conditions at the location of the project."

The Department of Regional Planning reports that under current law, identifying critical thresholds for public health and safety is already one of the stated intents of CEQA. Expanding the current definition of "environment" would require the lead agency to analyze the cause-effect relationship between environmental impact that are difficult to establish or that require years of data collection, sufficient samples and analysis. DRP indicates that by requiring the lead agency to include this information in the EIR would create an unnecessary burden on the County's land use permitting process related to CEQA compliance.

SB 617 passed the Senate Environmental Quality Committee by a vote of 7 to 2 on May 1, 2013. The measure is scheduled to be heard in the Senate Appropriations Committee on May 13, 2013.

SB 633 (Pavley), which as amended on May 6, 2013, would: 1) limit the need for preparation of a supplemental EIRs to instances when new information becomes available to the lead agency or any responsible agency; and 2) authorize the ORP to revise CEQA guidelines to add a categorical exemption for temporary events that do not have a significant effect on the environment. SB 633 passed the Senate Environmental Quality Committee by a vote of 8 to 0 on May 1, 2013. The measure has been referred to the Senate Appropriations Committee.

SB 754 (Evans), which as amended on May 6, 2013, would: 1) prohibit a project applicant, or environmental consultant retained by the project applicant, to contract for, direct, or prepare the initial study, negative declaration, or EIR; 2) prohibit a later project or infill project from tiering off a previous EIR, if the previous EIR was certified more than seven years prior to the issuance of a notice of preparation of an EIR for the later project or infill project or the commencement of the environmental review of the later project or infill project, whichever is earlier; 3) authorize an action or proceeding to enforce the implementation of mitigation measures if a project applicant fails to implement those measures, if notice of the alleged non-compliance is given to the

project applicant, responsible party, public agency, and Attorney General; and 4) remove the cap on the amount a project applicant is required to pay for mitigation measures related to archaeological resources. SB 754 passed the Senate Environmental Quality Committee by a vote of 6 to 2 on May 1, 2013. The measure has been referred to the Senate Appropriations Committee.

SB 787 (Berryhill), which as amended on April 18, 2013, would integrate newer environmental planning laws with the CEQA process to eliminate duplicative environmental review and lawsuits based on non-environmental issues, failed passage in the Senate Environmental Quality Committee by a vote of 2 to 7 on May 1, 2013. The measure was granted reconsideration.

AB 37 (Perea), which as amended on March 18, 2013, would require, until January 1, 2017, upon the request of a project applicant and the consent of the lead agency, that the lead agency prepare a record of proceedings concurrently with the preparation of negative declarations, mitigated negative declarations, EIRs, or other environmental documents for projects of statewide, regional or area wide environmental significance and projects that would implement the Sustainable Communities Strategy pursuant to SB 375. This measure was placed on the Assembly Appropriations Committee Suspense File on May 1, 2013.

AB 380 (Dickinson), which as introduced on February 14, 2013, would require that: 1) all public notices filed during the CEQA review process be posted electronically on the OPR website, as well as publicly with the county clerk-recorder's office in the county in which the project is occurring; 2) all notices shall be posted in a timely manner and date-stamped when posted; and 3) the lead agency's scoping process for a CEQA project must include public notice and participation. AB 380 passed the Assembly Local Government Committee on May 1, 2013 and has been referred to the Assembly Appropriations Committee.

AB 417 (Frazier), which as amended on April 18, 2013, would: 1) until January 1, 2018, exempt from CEQA a bicycle transportation plan for an urbanized area; and 2) require a local agency that determines that the bicycle transportation plan is exempt under this provision and approves or determines to carry out that project, to file notice of the determination with the county clerk, passed the Assembly Floor by a vote of 70 to 2 on April 25, 2013. The measure is pending assignment to a policy committee in the Senate.

AB 515 (Dickinson), which as amended on March 11, 2013, would establish a CEQA compliance court vested with original jurisdiction over actions of proceedings brought

pursuant to CEQA and joined matters related to land use and environmental laws, was held in the Assembly Judiciary Committee at the request of the author on April 23, 2013.

AB 543 (Campos), which as amended on May 6, 2013, would require a lead agency to translate, as specified, certain notices required by the act and a summary of any negative declaration, mitigated negative declaration, or environmental impact report when a group of non-English-speaking people, as defined, comprises at least 5 percent of the population within the lead agency's jurisdiction and the project is proposed to be located at or near an area where the group of non-English-speaking people comprises at least 5 percent of the residents of that area.

According to the Department of Public Health's 2013 "Key Indicators of Health by Service Planning Area" report, 28.8 percent of adults speak Spanish primarily and 8 percent of adults speak an Asian¹ language primarily in Los Angeles County. Additionally, there are two Service Planning Areas (SPAs) where over 6 percent of the population indicated they primarily speak some other² language (the San Fernando and West SPAs).

The Department of Regional Planning reports that the provisions of AB 543 would significantly increase the costs to the County departments, including DRP, DWP and Parks and Recreation, that carryout public projects in the communities with over 5 percent non-English speaking persons. The cost of translating notices and other CEQA-related documents is unknown but is anticipated to be significant and would potentially add significant time delays to the process.

AB 543 passed the Assembly Natural Resources Committee by a vote of 6 to 3 on April 29, 2013. The measure is awaiting a hearing in the Assembly Appropriations Committee.

AB 756 (Melendez), which as amended on April 11, 2013, would expedite judicial review of certain public works projects challenged under CEQA, was held in the Assembly Judiciary Committee at the request of the author.

AB 953 (Ammiano), which as introduced on February 22, 2013, would require a lead agency preparing an EIR to analyze significant environmental effects resulting from locating a proposed project near, or attracting people to, areas with substantial existing or reasonably foreseeable natural hazards or adverse environmental conditions, passed

¹ Asian languages include: Burmese, Cambodian, Cantonese, Chinese unspecified, Filipino, Indian, Indonesian, Japanese, Korean, Mandarin, Tagalog, Taiwanese, and Vietnamese.

² Other languages include: European languages, Arabic, Farsi/Persian, Hebrew, Ethiopian, Nigerian, American Indian, Chinatec, and Creole.

the Assembly Appropriations Committee by a vote of 11 to 5 on May 8, 2013. This measure now proceeds to the Assembly Floor.

AB 1302 (Hagman), which as amended on March 21, 2013, would allow an environmental document prepared under CEQA to: 1) use standards provided by existing State or Federal environmental protection laws as the exclusive means of evaluating and mitigating environmental impacts; and 2) limit the causes of action upon which parties may file suit to enforce CEQA, failed passage in the Assembly Natural Resources Committee by a vote of 3 to 6 on April 29, 2013.

Conclusion

As previously reported, the County's State Legislative Agenda has six policies related to CEQA, all of which address either air quality or land use planning issues. Generally, these policies state that the County will: 1) oppose legislation which would provide broad and categorical CEQA exemptions; 2) oppose legislation that would grant private projects exemptions from the requirements of CEQA; 3) support legislation which would provide public projects expedited judicial and administrative review procedures under CEQA; 4) support legislation which would provide narrow and tailored exemptions for essential public projects or projects that provide vital public services; 5) support legislation that would preserve the County's flexibility in making CEQA determinations as they relate to the State's greenhouse gas emission reduction efforts; and 6) support legislation that provides urban counties with the same authority that cities have under current law to exempt infill projects under CEQA.

However, the broad nature of most of the bills, as well as specific issues and concerns raised by the departments regarding some of the proposed legislation do not fall into any of the above stated Board-adopted policies. Therefore, the decision to support or oppose any of the CEQA-related bills, or specific provisions with any of the measures, is a matter for Board policy determination.

This office will continue to analyze and monitor these measures and work with appropriate Board deputies to make recommendations as needed.

WTF:RA
MR:VE:AO:lm

c: All Department Heads
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